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Aaron Golle

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SCHWEGMAN, LUNDBERG & WOESSNER, P.A.

P.O. BOX 2938

MINNEAPOLIS, MN 55402

EXAMINER

HAN, JASON

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/707,618
Filing Date: December 24, 2003
Appellant(s): GOLLE ET AL.

Golle et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 31, 2007 appealing from the
Office action mailed February 28, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3-4, 10-12, and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (U.S. Patent 5,553,289 A).
2. With regards to Claim 1, Hoffman discloses an EL sign [Figures 1, 4, and 6-7] comprising an EL illuminated color and a non-illuminated color [Column 3, Line 62 – Column 4, Line 31].

Though Hoffman does not specifically teach the particulars of the EL lighting element being white in a non-illuminated condition and blue-green in an illuminated condition, whereby a yellow layer imparts a yellow tint to the sign in daylight when the EL lighting element is non-illuminated and a light green appearance at night when the EL lighting element is illuminated, it is considered an obvious matter of design preference with respect to the contrasting colors of the device, whereby signs are commonly known in the art to have two or more colors (e.g., yellow, white, and blue-green). Hoffman corroborates, “The indicia defining member 18 can have portions thereof of different and/or contrast layers of translucent colored or contrast material” [Column 4, Lines 26-30]. In this case, it is obvious to one of ordinary skill at the time of

invention that the Applicant is claiming an EL device that is white during non-illumination, such that the yellow tint layer is portrayed, while when the EL device is blue-green during illumination, the yellow tint would mix with the blue-green in providing a green illumination. Such a configuration is merely a combination of various and different contrast layers of translucent colored materials, which is suggested by Hoffman above.

3. With regards to Claim 3, Hoffman discloses the non-illuminated color being effective for signaling a safety message in daylight [Column 2, Line 14; Column 4, Lines 7-10].

4. With regards to Claim 4, Hoffman discloses the illuminated color being effective for signaling a safety message in the dark or other conditions of poor visibility [Column 2, Line 14; Column 6, Lines 5-11].

5. With regards to Claim 10, Hoffman discloses safety indicia defined by the illuminated color [Column 3, Line 62 – Column 4, Line 6; Column 4, Lines 10-15].

6. With regards to Claim 11, Hoffman discloses safety indicia defined by the non-illuminated color [Column 4, Lines 7-10, 15-20].

7. With regards to Claim 12, Hoffman discloses safety indicia defined by the illuminated color and the non-illuminated color [Column 3, Line 62 – Column 4, Line 31].

8. With regard to Claim 15-16, Hoffman discloses that a flasher/blinking mechanism “can be” incorporated into the system [Column 5, Lines 40-42], and thus, said EL lighting would be inherently static.

(10) Response to Argument

1. In response to Appellant's argument concerning the establishment of prima facie obviousness [Page 9], the prior art remains commensurate to the scope of the claims, wherein all limitations were addressed in the rejection as corroborated above and further below. It is also noted that the Examiner's interpretation was based on the broadest reasonable expectation of one ordinarily skilled in the art.

2. First, in response to Appellant's argument, "Hoffman teaches an illuminated sign that includes an illuminated portion visible through an indicia defining member (e.g., stencil)" [Page 10]... "Hoffman's teaching, on the other hand, is focused on the use of stencils to provide indicia on a sign at a low cost. Accordingly, it teaches away from the Applicant's invention, which has nothing to do with stenciling" [Page 11], the claim language provided insufficient structure and detail with respect to the sign itself, and thus, the argument is considered irrelevant and was not pertinent to the Examiner's interpretation within the final Office action. Regardless, Hoffman is not necessarily focused on the use of stencils, and teaches, "Indicia defining member 18 defines indicia 20, such as letters, numbers, a pattern, design or symbols for conveying a message and/or for ornamentation, the indicia 20 being formed at least in part by one or more illuminated portions of lamp 12 visible through the front panel 16. The indicia defining member 18 and indicia 20 defined thereby can be made in many various ways. For example, indicia defining member 18 can include a panel, sheet, layer, piece or strip of material, such as vinyl or plastic, made of transparent and non-transparent or opaque portions arranged to define indicia 20 with illuminated portions of lamp 12 being visible

through the transparent portions and/or the front panel 16... The indicia defining member 18 can have portions thereof of different and/or contrasting colors, or the sign 10 can further include one or more contrast layers of translucent colored or contrast material...” [Column 3, Line 62 – Column 4, Line 6... Column 4, Lines 27-30; underlined added for emphasis]. As noted above, Appellant is unnecessarily restricting Hoffman to teach a stencil, and it remains clear to one ordinarily skilled in the art that the indicia defining member 18 and indicia 20 may be of various transparent contrast layers in producing the sign.

3. Second, in response to Appellant’s argument, “Hoffman is silent as to the design or function of a sign which has a first desired color during the daylight in a non-illuminated condition, and a second, different color for use in the evening in an illuminated condition. Additionally, Hoffman is silent as to the particular color combination claimed by the Applicants wherein the sign has a yellow tint during the day and a light green appearance at night” [Pages 10-11]”, Hoffman discloses an EL sign [Figures 1, 4, and 6-7] comprising an EL illuminated color and a non-illuminated color [Column 3, Line 62 – Column 4, Line 31]. It remains clear from the above teaching of Hoffman that the EL sign would be a first desired color in a non-illuminated condition (via a particular contrast layer and indicia) and a second different color when illuminated (via different contrast layers in combination along with the indicia). Though Hoffman does not specifically teach the particulars of the EL lighting element being white in a non-illuminated condition and blue-green in an illuminated condition, whereby a yellow layer imparts a yellow tint to the sign in daylight when the EL lighting element is non-

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illuminated and a light green appearance at night when the EL lighting element is illuminated, it is considered an obvious matter of design preference with respect to the contrasting colors of the device, whereby signs are commonly known in the art to have two or more colors (e.g., yellow, white, and blue-green). Hoffman corroborates, "The indicia defining member 18 can have portions thereof of different and/or contrast layers of translucent colored or contrast material" [Column 4, Lines 26-30]. In this case, it is obvious to one of ordinary skill that the Appellant is claiming an EL device that is white during non-illumination, such that the yellow tint layer is portrayed, while when the EL device is blue-green during illumination, the yellow tint would mix with the blue-green in providing a green illumination. Such a configuration is merely a combination of various and different contrast layers of translucent colored materials, which is suggested by Hoffman above.

4. Lastly, in response to Appellant's argument, "The Examiner has cited no prior art, nor taken any official notice of prior art, addressing the elements of Applicants' claimed invention that are missing from Hoffman", no official notice was taken with regards to Hoffman because the matter was considered obvious and plain as a simple matter of physics, as mentioned above, wherein it is clear that a white EL device having a blue-green tint layer during illumination would mix with a yellow tint layer there on top in producing a green illumination. During non-illumination the yellow layer would obviously provide a yellow tint to the sign during daylight due to its position on top. To recapitulate, the matter of color mixing was considered obvious physics and a mere

simple arrangement/combination of various and different contrast layers of translucent colored materials that were suggested by Hoffman above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sandra L. O'Shea/

Supervisory Patent Examiner, Art Unit 2875

Examiner Jason Han

/Jason M Han/

March 25, 2008

Conferees:

S.P.E. Sandra O'Shea/S. L. O./

Supervisory Patent Examiner, Art Unit 2875

Drew A. Dunn
/D. A. D./
TQAS 2800